

1 E. MARTIN ESTRADA  
United States Attorney  
2 MACK E. JENKINS  
Assistant United States Attorney  
3 Chief, Criminal Division  
JONATHAN GALATZAN (Cal. Bar No. 190414)  
4 Assistant United States Attorney  
Chief, Asset Forfeiture Section  
5 312 N. Spring Street, 14<sup>th</sup> Floor  
Los Angeles, CA 90012  
6 Telephone: (213) 894-2727  
Facsimile: (951) 276-6202  
7 E-mail: Jonathan.Galatzan@usdoj.gov

8 Attorneys for Plaintiff  
United States of America

9 UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 CAROLINE JOANNE HERRLING,

15 Defendant.  
16  
17  
18

NO. 2:23-cr-00059-MEMF

GOVERNMENT'S APPLICATION FOR  
PRELIMINARY ORDER OF FORFEITURE

19 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

20 Plaintiff United States of America hereby applies for  
21 issuance of a Preliminary Order of Forfeiture pursuant to Fed.  
22 R. Crim. P. 32.2(b) as to the following property: the real  
23 property with Assessor's Parcel Number 2005-012-003, commonly  
24 known as [REDACTED] West Hills, California [REDACTED],  
25 with title held by Caroline Herrling.

26 This application, which deals solely with the specific  
27 property as to which forfeiture is sought (described in detail  
28 above), is supported by defendant's guilty plea and the matters

1 set forth in the accompanying Memorandum of Points and  
2 Authorities.

3 DATED: July 5, 2023

Respectfully submitted

4 E. MARTIN ESTRADA  
United States Attorney

5 MACK E. JENKINS  
6 Chief, Criminal Division

7 /s/ Jonathan Galatzan  
8 JONATHAN GALATZAN  
Assistant United States Attorney  
9 Chief, Asset Forfeiture Section

10 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On March 2, 2023, Defendant Caroline Herrling entered a plea of guilty to Count One of the Information, which charges defendant with conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349. Pursuant to the Forfeiture Allegation of the Information and Fed. R. Crim. P. 32.2(b), the government now applies for the entry of the Preliminary Order of Forfeiture of the following property:

i. Real property with Assessor's Parcel Number 2005-012-003, commonly known as [REDACTED] West Hills, California [REDACTED], with the title held by Caroline Herrling (the "Forfeitable Property").

A proposed order is lodged contemporaneously herewith. The government also requests that the forfeiture of the Forfeitable Property be stated orally at defendant's sentencing and set forth in defendant's Judgment and Commitment Order.

**II. ARGUMENT**

**A. The Nexus Between Defendant's Crime and the Forfeitable Property Has Been Established by the Defendant's Guilty Plea**

As soon as practicable after entering a guilty verdict or accepting a plea of guilty or nolo contendere on any count in an indictment or information with regard to which criminal forfeiture is sought, the court must determine whether the government has established the requisite nexus between the property and the offense. Fed. R. Crim. P. 32.2(b)(1). The

1 Advisory Committee Notes for this provision explain that for the  
2 preliminary order of forfeiture, the court must determine "if  
3 the property was subject to forfeiture under the applicable  
4 statute, e.g., whether the property represented the proceeds of  
5 the offense." Advisory Committee Notes to Rule 32.2,  
6 subdivision (b) (2000 Adoption). The standard of proof  
7 regarding the forfeitability of property in a criminal case is  
8 preponderance of the evidence. See United States v. Najjar, 300  
9 F.3d 466, 485-86 (4th Cir. 2002); United States v. Shryock, 342  
10 F.3d 948, 991 (9th Cir. 2003) (following Najjar); United States  
11 v. DeFries, 129 F.3d 1293, 1312 (D.C. Cir. 1997); United States  
12 v. Hernandez-Escarsega, 886 F.2d 1560, 1576-77 (9th Cir. 1989)  
13 (interpreting language in 21 U.S.C. § 853); United States v.  
14 Bieri, 21 F.3d 819 (8th Cir. 1994) (§ 853).

15 Thus, the only question before the Court in connection with  
16 the requested entry of the proposed Preliminary Order is whether  
17 the evidence before the Court is enough to establish by a  
18 preponderance of the evidence that there is a nexus between the  
19 specific property to be forfeited, and the offense to which  
20 defendant pled guilty. See Rule 32.2(b)(1).

21 The existence or extent of third-party interests in the  
22 specific property will be determined after the entry of the  
23 preliminary order. See United States v. Lazarenko, 476  
24 F.3d 642, 648 (9th Cir. 2007) ("Upon a finding that the property  
25 involved is subject to forfeiture, a court must promptly enter a  
26 preliminary order of forfeiture without regard to a third  
27 party's interests in the property."). The preliminary order

1 should be entered promptly in order to avoid unnecessary delay  
2 in the forfeiture process and resolve potential third-party  
3 rights. United States v. Yeje-Cabrera, 430 F.3d 1, 15 (1st Cir.  
4 2005). The defendant need not be present when the preliminary  
5 order is entered. United States v. Segal, 495 F.3d 826, 837-38  
6 (7th Cir. 2007).

7 The government is not required to establish the defendant's  
8 ownership of the property either to seize it or to obtain a  
9 preliminary order of forfeiture, and third parties are  
10 prohibited from intervening in the criminal case and cannot  
11 complain that they have to wait for the ancillary proceeding to  
12 assert their rights. Almeida v. United States, 459 F.3d 377,  
13 381 (2d Cir. 2006); 18 U.S.C. § 1963(i). As explained in the  
14 Advisory Committee Notes to Rule 32.2 (2000), the Rule was  
15 revised with the intent to eliminate confusion over whether the  
16 extent of the defendant's ownership interest should be  
17 determined by the finder of fact. The new rule clarified that  
18 the only question upon conviction or a guilty plea is whether  
19 there is a nexus between the violation of which the defendant  
20 has been convicted (or to which he has pled) and the property  
21 sought - if there is, the court should enter an order forfeiting  
22 "whatever interest a defendant may have in the property without  
23 having to determine exactly what that interest is." A  
24 defendant cannot object to the entry of a preliminary order on  
25 the ground that the property at issue does not belong to him.  
26 United States v. Schlesinger, 396 F. Supp. 2d 267, 273 (E.D.N.Y.  
27 2005).

1 Here, all the proof that is necessary is contained in plea  
2 agreement, whereby Defendant admitted that the Forfeitable  
3 Property was subject to forfeiture as property representing the  
4 proceeds of the offense regarding the crime to which she pled  
5 guilty, namely 18 U.S.C. § 1349.

6 Therefore, the requirements of Rule 32.2(b) have been met  
7 and the proposed Preliminary Order should be entered.

8 **B. The Mechanics of the Criminal Forfeiture**

9 The Preliminary Order of Forfeiture becomes final as to the  
10 defendant at the time of sentencing (or before sentencing, if  
11 defendant consents). Rule 32.2(b)(3). After entry of the  
12 preliminary order, the second phase of the forfeiture  
13 proceedings may begin, to determine whether any third-party  
14 rights may exist in the specific property to be forfeited. Fed.  
15 R. Crim. P. 32.2(c)(1).

16 Accordingly, the government respectfully requests that the  
17 Court enter the proposed Preliminary Order of Forfeiture lodged  
18 contemporaneously herewith, authorizing the government to seize  
19 the property subject to forfeiture (to the extent it has not  
20 already done so) and to commence proceedings governing  
21 third-party rights. Fed. R. Crim. P. 32.2(b)(3). Following the  
22 Court's disposition of any third-party interests, or the  
23 expiration of the period provided in 21 U.S.C. § 853(n)(2) for  
24 the filing of third-party petitions, the government shall have  
25 clear title to the Forfeitable Property.

26 **III. FORFEITURE MUST BE PRONOUNCED AT SENTENCING**

27 The Court must pronounce the forfeiture conditions orally  
as part of the sentence imposed on the defendant and must

1 include the forfeiture in the judgment and commitment order.  
2 Fed. R. Crim. P. 32.2(b)(4). The government recommends the  
3 following language be read to the defendant and modified as  
4 necessary for inclusion in the judgment and commitment order at  
5 the time of her sentencing:

6 Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28  
7 U.S.C. § 2461(c) and the Information, defendant  
8 Caroline Herrling has forfeited all of her right,  
9 title, and interest in the specific property more  
10 particularly described in the Preliminary Order  
11 of Forfeiture entered on [date].

12 **IV. CONCLUSION**

13 For the foregoing reasons, the government respectfully  
14 requests that the Court forthwith enter the proposed Preliminary  
15 Order of Forfeiture lodged herewith.

16 DATED: July 5, 2023

Respectfully submitted,

17 E. MARTIN ESTRADA  
18 United States Attorney

19 MACK E. JENKINS  
Chief, Criminal Division

20 /s/ Jonathan Galatzan  
21 JONATHAN GALATZAN  
22 Assistant United States Attorney  
Chief, Asset Forfeiture Section

23 Attorneys for Plaintiff  
24 UNITED STATES OF AMERICA  
25  
26  
27